

By: Rose

H.B. No. 3570

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of quarries; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.067 to read as follows:

Sec. 382.067. LIMITATIONS ON CERTAIN ROCK CRUSHERS. (a)

This section applies only to a rock crusher:

(1) for which:

(A) an application for a permit under Section 382.0518 was received by the commission on or before July 1, 2003;

and

(B) a permit under Section 382.0518 was not issued before September 1, 2005; and

(2) that is located over an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

(b) A person may not operate a rock crusher under a permit under Section 382.0518 that is located less than one mile from a building used as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the crusher was filed with the commission. The measurement of distance for purposes of this section shall be taken from the point on the rock crusher that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place

1 of worship that is nearest the rock crusher.

2 (c) The commission may not authorize a person to operate a
3 rock crusher under a permit by rule.

4 SECTION 2. The heading to Subtitle C, Title 5, Health and
5 Safety Code, is amended to read as follows:

6 SUBTITLE C. AIR AND ENVIRONMENTAL QUALITY

7 SECTION 3. Subtitle C, Title 5, Health and Safety Code, is
8 amended by adding Chapter 391 to read as follows:

9 CHAPTER 391. QUARRY PERMIT

10 Sec. 391.001. DEFINITIONS. In this chapter:

11 (1) "Aggregates" includes any commonly recognized
12 construction material originating from a quarry or pit by the
13 disturbance of the surface, including dirt, soil, rock asphalt,
14 clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche,
15 limestone, dolomite, rock, riprap, or other nonmineral substance.

16 (2) "Commission" means the Texas Commission on
17 Environmental Quality.

18 (3) "Operator" means any person proposing the creation
19 of a quarry or engaged in and responsible for the physical operation
20 and control of a quarry.

21 (4) "Pit" means an open excavation not less than five
22 feet below the adjacent and natural ground level from which
23 aggregates have been or are being extracted for commercial sale.

24 (5) "Quarry" means the site where aggregates are being
25 or have been removed or extracted for commercial sale from the earth
26 to form the pit, including the entire excavation, stripped areas,
27 and haulage ramps and land adjacent to those areas on which the

1 plant processing the raw materials is located. The term does not
2 include:

3 (A) land owned or leased by the operator that is
4 not used in the production of aggregates; or

5 (B) a mining or reclamation activity regulated
6 under Chapter 134, Natural Resources Code.

7 Sec. 391.002. APPLICABILITY. This chapter applies to a
8 quarry only if the quarry operation includes a rock crusher:

9 (1) for which:

10 (A) an application for a permit under Section
11 382.0518 was received by the commission on or before July 1, 2003;
12 and

13 (B) a permit under Section 382.0518 was not
14 issued before September 1, 2005; and

15 (2) that is located over an aquifer designated as a
16 sole source aquifer under the federal Safe Drinking Water Act (42
17 U.S.C. Section 300f et seq.).

18 Sec. 391.003. PERMIT REQUIRED. An operator may not create
19 or begin operating a quarry unless the operator has obtained a
20 quarry permit under this chapter from the commission.

21 Sec. 391.004. APPLICATION PROCEDURE. (a) An application
22 for a quarry permit must include:

23 (1) a site plan that contains:

24 (A) a site map detailing the proposed permit
25 area;

26 (B) the location and identity of all affected and
27 unaffected areas;

1 (C) a description of the location of the quarry,
2 including the distance and direction from the nearest:

3 (i) stream and groundwater source;

4 (ii) state and county road;

5 (iii) intersection;

6 (iv) dwelling;

7 (v) school;

8 (vi) place of worship; and

9 (vii) commercial or institutional building
10 that is neither owned nor leased by the operator;

11 (D) the ingress and egress routes for materials
12 to be transported on public roadways;

13 (E) a general description of the anticipated
14 stages in which the quarry will be mined;

15 (F) subject to Subsection (e), a report from an
16 independent hydrologist, professional geoscientist, or
17 professional engineer retained by the operator on the groundwater
18 or surface water in the quarried area, including any
19 recommendations by the hydrologist, geoscientist, or engineer to
20 prevent a detrimental effect on the groundwater and surface water;
21 and

22 (G) if a report is required under Paragraph (F),
23 a description of how the operator will address the recommendations
24 made in the hydrologist's report;

25 (2) if blasting will be conducted in the quarry, a
26 blasting plan that contains:

27 (A) a description of the blasting equipment and

1 procedures to be used at the site; and

2 (B) a description of the procedures and plans for
3 the recording and retention of blasting records for each blast that
4 is to be conducted at the site; and

5 (3) proof that the operator holds a permit under
6 Section 382.0518 for the rock crusher located at the quarry.

7 (b) A quarry permit application fee of \$1,000 must accompany
8 the application.

9 (c) If the commission denies an application, not later than
10 the 60th day after the date the commission received the
11 application, the commission shall notify the applicant in writing
12 of the commission's decision, specifying any defects in the
13 application. An applicant denied a permit under this subsection
14 may submit a modified application.

15 (d) A proceeding to consider a quarry permit application or
16 to issue a quarry permit is not a contested case for purposes of
17 Chapter 2001, Government Code.

18 (e) An application for a permit under this section for a
19 quarry that does not have groundwater or surface water in the
20 quarried area is not required to include a report under Subsection
21 (a)(1)(F) or a description of how the operator will address
22 recommendations under Subsection (a)(1)(G).

23 Sec. 391.005. PERMIT EXPIRATION AFTER NONUSE. A permit
24 issued to create or begin operating a quarry expires on the fifth
25 anniversary of the date that the permit was issued if quarry
26 operations have not begun at the permit area before that date.

27 Sec. 391.006. PERMIT AMENDMENT. (a) A quarry operator must

1 obtain a permit amendment:

2 (1) before a quarry may be expanded to an adjacent
3 tract of land; or

4 (2) if emissions from a rock crusher associated with
5 the quarry increase substantially, as determined by the commission.

6 (b) An applicant for a permit amendment must submit an
7 application that contains the information required by Section
8 391.004.

9 Sec. 391.007. NOTICE TO CERTAIN OFFICIALS AND GROUNDWATER
10 CONSERVATION DISTRICT. On receipt of an application for a quarry
11 permit, the commission shall send notice of the application to:

12 (1) each state senator and state representative who
13 represents the area in which the quarry will be located;

14 (2) the county judge and county commissioners of each
15 county in which the quarry will be located; and

16 (3) each groundwater conservation district in which
17 the quarry will be located, if applicable.

18 Sec. 391.008. TRAFFIC SAFETY. (a) The operator of a quarry
19 shall adhere to all Texas Department of Transportation rules
20 relating to the safe movement of normal highway traffic, including
21 those rules governing the construction and maintenance of private,
22 public, and commercial access driveways.

23 (b) A quarry operator shall work with the Texas Department
24 of Transportation to ensure the construction of any road or
25 driveway improvement necessary for the safe operation of vehicles
26 at quarry entrances and exits.

27 Sec. 391.009. BLASTING RECORD. (a) If blasting is

1 conducted in a quarry, the operator of the quarry shall maintain a
2 blasting record that includes the following information:

3 (1) the exact location, time, and date of the
4 detonation;

5 (2) the weather conditions during the blast;

6 (3) the seismograph or vibration monitor reading,
7 including the exact location of the seismograph or vibration
8 monitor and its distance from the blast; and

9 (4) the name of the person taking the seismograph or
10 vibration monitor reading.

11 (b) The operator shall maintain the blasting records of a
12 detonation, including the seismograph or vibration monitor
13 readings, for not less than two years after the date of the
14 detonation.

15 (c) The operator shall maintain the blasting records at the
16 quarry site.

17 (d) The operator shall make the blasting records available
18 for inspection by the commission.

19 Sec. 391.010. CIVIL PENALTY; INJUNCTION. (a)
20 Notwithstanding Section 7.102, Water Code, an operator who violates
21 this chapter is liable to the state for a civil penalty in the
22 amount of \$1,000 for each violation. Each day a violation continues
23 is a separate violation.

24 (b) At the request of the commission, the attorney general
25 shall bring suit for injunctive relief to restrain a continuing
26 violation of this chapter or to recover a civil penalty as provided
27 by Subsection (a) or for both injunctive relief and recovery of a

1 civil penalty.

2 SECTION 4. Section 5.013(a), Water Code, is amended to read
3 as follows:

4 (a) The commission has general jurisdiction over:

5 (1) water and water rights including the issuance of
6 water rights permits, water rights adjudication, cancellation of
7 water rights, and enforcement of water rights;

8 (2) continuing supervision over districts created
9 under Article III, Sections 52(b)(1) and (2), and Article XVI,
10 Section 59, of the Texas Constitution;

11 (3) the state's water quality program including
12 issuance of permits, enforcement of water quality rules, standards,
13 orders, and permits, and water quality planning;

14 (4) the determination of the feasibility of certain
15 federal projects;

16 (5) the adoption and enforcement of rules and
17 performance of other acts relating to the safe construction,
18 maintenance, and removal of dams;

19 (6) conduct of the state's hazardous spill prevention
20 and control program;

21 (7) the administration of the state's program relating
22 to inactive hazardous substance, pollutant, and contaminant
23 disposal facilities;

24 (8) the administration of a portion of the state's
25 injection well program;

26 (9) the administration of the state's programs
27 involving underground water and water wells and drilled and mined

1 shafts;

2 (10) the state's responsibilities relating to regional
3 waste disposal;

4 (11) the responsibilities assigned to the commission
5 by Chapters 361, 363, 382, 391, and 401, Health and Safety Code;

6 (12) the administration of the national flood
7 insurance program;

8 (13) administration of the state's water rate program
9 under Chapter 13 of this code; and

10 (14) any other areas assigned to the commission by
11 this code and other laws of this state.

12 SECTION 5. Subchapter L, Chapter 5, Water Code, is amended
13 by adding Section 5.517 to read as follows:

14 Sec. 5.517. EMERGENCY ORDER CONCERNING OPERATION OF QUARRY
15 WITHOUT PERMIT. The commission shall issue an emergency order
16 under this subchapter suspending operations of a quarry or other
17 facility that:

18 (1) is required to obtain a permit under Chapter 391,
19 Health and Safety Code; and

20 (2) is operating without the necessary permit.

21 SECTION 6. Section 7.052, Water Code, is amended by adding
22 Subsection (b-1) and amending Subsection (d) to read as follows:

23 (b-1) The amount of the penalty for operating a quarry that
24 is required to obtain a permit under Chapter 391, Health and Safety
25 Code, and that is operating without the required permit is \$10,000.
26 Each day that a continuing violation occurs is a separate
27 violation.

1 (d) Except as provided by Subsections [~~Subsection~~] (b) and
2 (b-1), each day that a continuing violation occurs may be
3 considered a separate violation. The commission may authorize an
4 installment payment schedule for an administrative penalty
5 assessed under this subchapter, except for an administrative
6 penalty assessed under Section 7.057.

7 SECTION 7. The changes in law made by Section 5.517, Water
8 Code, as added by this Act, and Section 7.052, Water Code, as
9 amended by this Act, apply only to a violation that occurs on or
10 after the effective date of this Act. A violation that occurs
11 before that date is governed by the law in effect at the time the
12 violation occurred, and the former law is continued in effect for
13 that purpose.

14 SECTION 8. (a) The Texas Commission on Environmental
15 Quality shall be prepared to accept applications for permits under
16 Chapter 391, Health and Safety Code, as added by this Act, not later
17 than March 1, 2008.

18 (b) A person is not required to hold a permit to create or
19 operate a quarry under Chapter 391, Health and Safety Code, as added
20 by this Act, before June 1, 2008.

21 SECTION 9. This Act takes effect September 1, 2007.